

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

TANYA GILBERT,

Plaintiff,

vs.

Docket No. 2:12-cv-02837-SHM-cgc

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant.

MOTION TO DISMISS COUNTS 1, 3, 4 & 5

Defendant Nationwide Property and Casualty Insurance Company ("Nationwide"), by and through counsel, files this Motion to Dismiss certain counts of the Plaintiff's Complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. In support of its Motion, Nationwide states that the Plaintiff's Breach of Contract claim is subject to dismissal because consequential damages are not available due to the exclusive nature of the bad faith statute. Similarly, the Plaintiff's Tennessee Consumer Protection Act claim is subject to dismissal under Tennessee Code Annotated section 56-8-113. Finally, the Plaintiff's Common Law Bad Faith and Punitive Damages claims are also subject to dismissal under Tennessee law because the Statutory Bad Faith Provisions of Tennessee Code Annotated section 56-7-105 provide the exclusive remedy for alleged bad faith in handling an insurance claim.

In support of its Motion, Nationwide submits contemporaneously herewith a Memorandum in Support.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of November, 2012, a copy of the foregoing was electronically filed and served on the parties listed below via first class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party:

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